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Filing date: **05/17/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052327
Party	Defendant King of Rock 'N' Roll Music, Inc.
Correspondence Address	KING OF ROCK 'N' ROLL MUSIC, INC. 49 GREENWICH AVENUE GREENWICH, CT 06830 UNITED STATES
Submission	Answer
Filer's Name	Jeffrey E. Jacobson
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Date	05/17/2010
Attachments	Answer.pdf (4 pages)(28509 bytes) affidavit517.pdf (1 page)(943922 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration No. 1,909,802

For the Trademark KING OF ROCK 'N' ROLL MUSIC

Registered December 8, 1995

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ELVIS PRESLEY ENTERPRISES, INC.,

Petitioner,

v.

KING OF ROCK 'N' ROLL MUSIC, INC.,

Registrant.

----- x

Cancellation No. 92052327

ANSWER

Registrant KING OF ROCK 'N' ROLL MUSIC, INC., by its attorneys Jacobson & Colfin, P.C., as and for its Answer to the Plaintiff's Petition for Cancellation states as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1.
2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2.
3. Deny the allegations contained in paragraph 3.
4. Deny the allegations contained in paragraph 4.
5. Deny the allegations contained in paragraph 5.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE
PETITIONER FAILED TO ALLEGE VALID GROUNDS FOR THE
CANCELLATION OF REGISTRANT'S KING OF ROCK 'N' ROLL MUSIC, INC.'S
MARK.

6. Registrant repeats and realleges paragraphs 1 through 5 as if fully set forth herein.
7. Petitioner's Petition for Cancellation should be denied in its entirety.
8. Registrant is the owner of the KING OF ROCK 'N' ROLL MUSIC mark, Registration No. 1,909,802.
9. KING OF ROCK 'N' ROLL MUSIC was registered by the United States Patent and Trademark Office in 1995.
10. The KING OF ROCK 'N' ROLL MUSIC mark has been in use in commerce as a registered mark for over five years.
11. The KING OF ROCK 'N' ROLL MUSIC mark was renewed by the United States Patent and Trademark Office on October 25, 2004.
12. The KING OF ROCK 'N' ROLL MUSIC mark is incontestible.
13. There are limited grounds to cancel a mark that is incontestible.
14. Petitioner alleged that Registrant's KING OF ROCK 'N' ROLL MUSIC mark should be cancelled under grounds of abandonment.
14. The KING OF ROCK 'N' ROLL MUSIC mark has been in continuous use in commerce since at least as early as its date of first use, 1993.
15. Registrant intends to continue using the mark KING OF ROCK 'N' ROLL MUSIC in commerce.
16. The KING OF ROCK 'N' ROLL MUSIC mark has not been abandoned.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE
PETITIONER'S CLAIMS ARE BARRED BY EQUITABLE PRINCIPLES, INCLUDING
LACHES, WAIVER, ACQUIESCENCE AND EQUITABLE ESTOPPEL

17. Registrant repeats and realleges paragraphs 1 through 16 as if fully set forth herein.
18. Petitioner's Petition for Cancellation is barred by equitable principles and should be denied in its entirety.
19. Petitioner had constructive knowledge of Registrant's use of the mark when it was published for opposition on May 16, 1995 and registered on August 8, 1995, and may have had actual knowledge at an earlier date.
20. Petitioner has knowingly allowed Registrant to use the mark without objection for approximately 15 years constituting a waiver of petition for cancellation.
21. Registrant has unreasonably delayed in bringing this action as approximately 15 years have passed since Registrant first had knowledge of the registered mark.
22. Registrant would be prejudiced if Petitioner is now allowed to bring this cancellation as Registrant has relied on Petitioner's implied assurances that it would not bring such an action.
23. Petitioner is thereby estopped from proceeding against THE KING OF ROCK 'N' ROLL MUSIC, INC.

WHEREFORE, Registrant KING OF ROCK 'N' ROLL MUSIC, INC. requests that this petition be dismissed with prejudice, that none of the relief sought by Petitioner be granted and pray that any and all additional and further relief that this Court deems appropriate be awarded to Registrant KING OF ROCK 'N' ROLL MUSIC, INC.

Dated: New York, New York
May 17, 2010

JACOBSON & COLFIN, P.C.

By: /JEFFREY E. JACOBSON/
Jeffrey E. Jacobson (JEJ 1199)
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To:

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cli/lit/bennett/Answer

AFFIDAVIT OF SERVICE

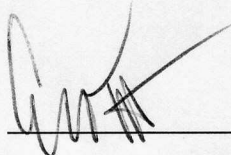
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Eric Fries, being duly sworn, deposes and says; that deponent is not a party to the action, is over 18 years of age and resides at 754 Washington Avenue, #2L, Brooklyn, NY 11238, that on the 17th day of May, 2010, deponent served the within ANSWER upon the party listed below, by regular mail:

To:

Seth A. Rose, Esq.
Loeb & Loeb LLP
321 North Clark Street, Suite 2300
Chicago, Illinois 60654

by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in-a post office-official depository under the exclusive care and custody of the United States Postal Service within New York State.



Eric Fries

Sworn to before me
this 17th day of May, 2010



NOTARY PUBLIC

BRUCE E. COLFIN
NOTARY PUBLIC, State of New York
No. 02004848139
Qualified in Nassau County
Commission Expires July 31, 2013

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